

STEVEN JOHN CLEAVE

v

THE QUEEN

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: H T Young for Applicant
M E Ball for Crown

Judgment: 5 July 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted of wounding with intent to commit grievous bodily harm.¹ He seeks leave to appeal on the grounds that a substantial miscarriage of justice may occur unless this Court hears his appeal.

[2] The miscarriage is said to arise because two knives seized by police at the scene of the crime were not the subject of forensic testing. The applicant contends that if such testing is undertaken it may show that one of the knives may have been used by a woman at the scene to injure the victim. He also contends that if witness

¹ *R v Cleave* DC Christchurch CRI-2009-009-6486, 25 January 2010.

statements are obtained from neighbours, what they say is likely to assist him in an appeal to this Court.

[3] The applicant did not give evidence at his trial. The Court of Appeal² looked carefully into the applicant's claim that his wish to give evidence was wrongly overridden by his counsel. It rejected that claim. The Court accepted that, at the end of the Crown case, there were matters which the applicant would have liked to tell the jury, but on advice he voluntarily elected not to give evidence, twice signing instructions to that effect.

[4] The present application seeks a retrial to run a different defence not available on the evidence at trial. There is no real prospect of scientific evidence to support this defence becoming available. In those circumstances there is no prospect of this Court concluding that there may have been a substantial miscarriage of justice at the applicant's trial on account of the absence of such evidence.

[5] The suggestion that neighbours might have seen or heard something which would have assisted his case is entirely speculative. There is nothing to suggest that fresh cogent evidence from them would be available at a further appeal.

[6] In these circumstances it is not necessary in the interests of justice to hear the proposed appeal and the application is dismissed.

Solicitors:
Crown Law Office, Wellington

² *Cleave v R* [2011] NZCA 40.